



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



For Meeting Date: February 11, 2010

Agenda Item No. 2: Public Hearing (Continued): Consideration of Limitations on Vested Rights Pertaining to Annual Production, Western Aggregates, LLC (CA Mine ID #91-58-0001), Kerry Shapiro (Agent), Western Aggregates, LLC (Operator), Yuba County.

INTRODUCTION: The State Mining and Geology Board (SMGB) is the lead agency pursuant to the Surface Mining and Reclamation Act (SMARA) for the County of Yuba. On August 6, 2009, the SMGB commenced the special public hearing to determine whether Western Aggregates, LLC. (Western) had vested rights for 4,125 acres, which included its current surface mining operations, located in the Yuba Goldfields. At its public hearing held on September 11, 2009, the SMGB accepted the findings set forth by the California Geological Survey (CGS), and determined that a preponderance of evidence existed that demonstrated Western has vested rights for all Sections with exception to Sections 25 and 30, and the southwest corner of Section 34. The SMGB also noted that it would consider limitations in terms of annual production associated with this determination of vested rights. This matter was to be discussed at the SMGB's January 2010, regular business meeting to be held in the City of Marysville, California, however, it was deferred until February 11, 2010. In addition, upon such consideration and determination by the SMGB, Western would submit an amended reclamation plan for all of their surface mining operations within 90 days of such determination.

REGULATORY AUTHORITY: California Code of Regulations (CCR) Article 15, Section 3964, states:

"Following the public hearing, the Board, if the Board conducted the hearing, or its committee, administrative hearing officer, or special master shall determine whether the Claimant, by a preponderance of the evidence, has demonstrated a claim for vested rights pursuant to Public Resources Code Section 2776. The determination shall identify upon what specific property the vested rights are established and the scope and nature of surface mining operations included within the established vested right or rights. If the public hearing was conducted by a committee of the Board or an administrative hearing officer or special master designated by the Board, the findings and recommendation or proposed decision of the committee of the Board, administrative hearing officer, or special master shall be presented to a quorum of the Board at a regular business meeting, no later than 60 business days after completion of the vested rights public hearing, for consideration and adoption by the full Board. The Board may adopt the recommendation or proposed decision or reject the



Executive Officer's Report

recommendation or proposed decision and direct the matter back to its delegee for further consideration in light of the discussion before the full Board. The Board may also modify the proposed decision based upon the record before it or make an alternative determination based upon the record or following receipt of additional evidence before the full Board. Following adoption of the Board's final determination notification shall be made by certified mail to the party claiming vested rights and to the local agency originally holding lead agency status. Notification of the final determination of the Board shall also be made by regular mail to any person who commented at, or participated in, the public hearing, any person who has requested such notice, and shall be immediately posted upon the Board's website."

CCR Section 3565, provides procedures once a vested rights determination has been made, and states:

"A final determination by the Board recognizing a claim of vested rights shall constitute acknowledgment that the specific surface mining operations as identified upon the specific property or properties does not require a permit under Public Resources Code Section 2770 provided that no substantial change may be made in such mining operations. If any vested rights identified pursuant to this article are waived or abandoned the surface mining operations identified shall become subject to the permit requirements of the Surface Mining and Reclamation Act."

BACKGROUND:

The Yuba Goldfields: The Western Aggregates surface mining operation is situated in what is referred to as the Yuba Goldfields. The Yuba Goldfields encompasses approximately 10,000 acres along about 11 miles of the Yuba River between Yuba City-Marysville and Smartsville. This unique area is dominated by dredger tailings reworked from hydraulic mine waste that was deposited between 1852 and 1893 when the Caminetti Act was passed, ending hydraulic mining upstream. The Yuba Goldfields were the poster child of the agricultural lobby who brought the historic suit to put an end to hydraulic mining. This may have been the first significant victory of the environmental community in California. The construction of Englebright Dam in 1941 finally stopped the downstream migration of the old hydraulic tailings. Dredging of gold from the hydraulic waste began in 1902 near the town of Hammonton and by 1910, 15 dredges were operating in the lower Yuba River. The area has been dredged and re-dredged intermittently to progressively greater depths until the present time.



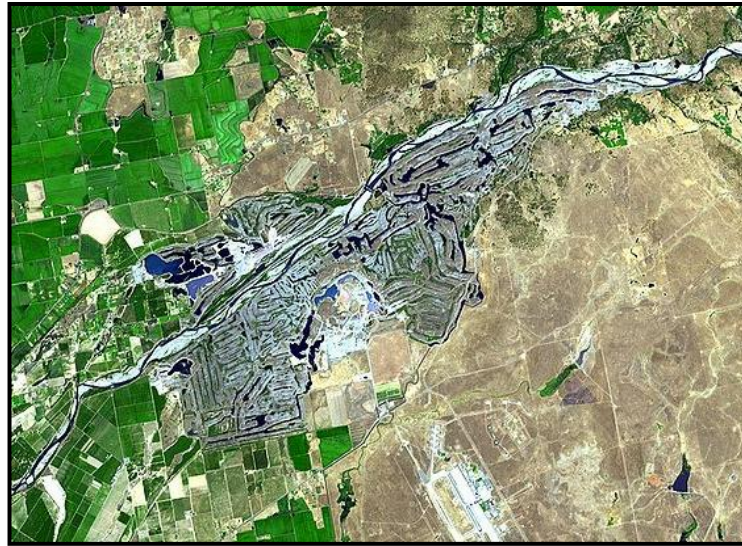


Figure 1 – The Yuba Goldfields (Source: NASA Earth Observatory)

In 1988, the California Geological Survey classified the area Mineral Resource Zone MRZ-2 for construction aggregate and determined that almost 23 square miles of the goldfields, containing more than 2.25 billion tons of PCC-grade aggregate, were available. The area was never designated as a “regionally significant” mineral resource because the SMGB had put the designation process on hold in order to dedicate maximum funds to accelerate mineral land classification. Nonetheless, it is undoubtedly one of the most significant aggregate deposits in the entire state. At the time of the classification study, the entire area of the goldfields had been classified by Yuba County in their general plan as a mineral resource extraction land use area.

Determination of Vested Rights Regulation Development: In a January 2007 ruling, the California Court of Appeal, Third Appellate District, held that a proper public notice and hearing was required for any vested rights determination, and in the matter of Western stated that the County failed to provide a proper notice and hearing in its consideration of vested rights for this surface mining operation. The court ruling provided two options for Western’s consideration should Western want to continue its aggregate mining in the Yuba Goldfields: either 1) prove its claim of vested rights in a public adjudicatory hearing before the SMGB (to be conducted within the County’s area of jurisdiction), or 2) obtain a permit to conduct such surface mining based on a public adjudicatory hearing before the County.

The SMGB has assumed certain obligations and responsibilities of a SMARA lead agency in the implementation of SMARA in the County of Yuba. These responsibilities include approval of reclamation plans and financial assurances, conduct of site inspections, and

determination of vested rights when petitioned by a claimant (operator) and such petition is determined to be within the jurisdiction of the SMGB. The SMGB recognized its authority to conduct a vested rights determination at its regular business meeting held on February 8, 2007, and adopted Resolution 2007-04 which defined the SMGB's authority as a SMARA lead agency to conduct a vested rights determination.

Between March 8, 2007, and September 14, 2007, the SMGB conducted several public hearings to hear preliminary concerns and comments from various stakeholders. These preliminary concerns and comments were reviewed by the SMGB and were publicly discussed at the SMGB's Policy and Legislation Committee meetings held on March 8, April 12, May 10, June 14 and September 7, 2007, and by the whole SMGB during its regular business meeting held on September 13, 2007. The SMGB adopted the new regulations at its regular business meeting held on February 14, 2008. On August 14, 2008, the Office of Administrative Law approved the proposed regulations, and such regulations were enacted on September 13, 2008.

Submittal of Request for Determination: Western filed a vested right Request for Determination on November 5, 2008. A chronology of pertinent administrative procedural actions since receipt of Western's Request for Determination is summarized in Table 1:



TABLE 1 Chronology of Pertinent Administrative Procedural Actions Western Aggregates, LLC. Request for Vested Rights Determination	
Administrative Action	Date Exercised
Receipt of Request for Determination with Administrative Record	November 5, 2008
Determination of Jurisdiction	November 19, 2008
Mailing of Determination of Jurisdiction	December 1, 2008
Mailing of Notice of Pending Vested Rights Determination	January 6, 2009; amended January 12, 2009
Estimated Cost for Determination of Findings Provided to Claimant	January 27, 2009
Determination of Hearing Officer	February 5, 2009
Commencement of Review of Administrative Record by CGS	March 3, 2009
Determination of Schedule	April 9, 2009
Provision of Further Public Notice	May 8, 2009
Submission of Written Comments and Materials	June 1, 2009
Submission of Rebuttal Materials	June 23, 2009
Commencement of Public Hearing	August 6 and 7, 2009
Continuation of Public Hearing and Determination	September 11, 2009
Public Hearing to Schedule Consideration of Limitations of Vested Rights	January 14, 2010
Public Hearing to Consider Limitations of Vested Rights Pertaining to Annual Production	February 11, 2010

The administrative record received on November 5, 2008, was comprised of three volumes (Volumes I, II and III-A, III-B and III-C), and 20 volumes of historical record containing over 12,000 pages. The Administrative Record, and all documents received during conduct of public hearings pertaining to this matter, have been, and continue to be made accessible for review at:

The Yuba County Government Center
 915 8th Street, Suite 109
 Marysville, CA 95901

And,

State Mining and Geology Board
 801 K Street, Suite 2015
 Sacramento, CA 95814

Documents received by the SMGB reflecting comments based on review of the Request for Determination, and rebuttals by the Claimant, are summarized in Table 2.

TABLE 2 Index to Pertinent Documents Received Prior to Conduct of August 6, 2009, Public Hearing				
Item No.	Commenter	Author	Description	Date
1.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Western Aggregates Request for Determination	October 2008; received November 5, 2008
2.0	SMGB Chairman	Allen M. Jones	Determination of Jurisdiction	November 19, 2008
3.0	Weinberg, Roger & Rosenfeld	Theodore Franklin, legal counsel for Calvert	Yuba Goldfields: Preliminary Assertion of Title	May 14, 2009
4.0	Hammonton Farms, LLC	Dana M. Davis	Western Aggregates Vested Rights Hearing for Aggregate Mining	June 5, 2009
5.0	Taylor & Wiley	John Taylor	Submission on Behalf of A. Teichert & Sons, Inc. in Response to Western Aggregates' Request for Determination	June 5, 2009
6.0	Weinberg, Roger & Rosenfeld	Theodore Franklin, legal counsel for Calvert	Western Aggregates LLC (CA Mine ID #91-58-0001) Request for Determination of Vested Rights	June 5, 2009

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7.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Western Aggregates LLCs Request for Determination: Response to SMGB Questions Regarding Reclamation Plan RP 80-01 (Includes SMGB's "Inquiry to Petition for Vested Rights Determination, Western Aggregates, LLC (CA Mine ID CA #91-58-0001), Yuba County," dated May 13, 2009)	June 9, 2009
8.0	Weinberg, Roger & Rosenfeld	Theodore Franklin, legal counsel for Calvert	Western Aggregates LLC (CA Mine ID #91-58-001) Request for Determination of Vested Rights (Errata)	June 10, 2009
9.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Request for Determination of Vested Rights, Yuba County, California, Rebuttal to Public Comments	June 24, 2009
10.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro	Western Aggregates LLC: Errata to Rebuttal to Public Comments	June 29, 2009
11.0	California Geological Survey	State Geologist Dr. John Parrish	Review of Evidence, Western Aggregates LLC Vested Rights Determination	July 2009
12.0	County of Yuba	Mary Jane Griego, Supervisor, District Three	Correspondence to SMGB Chairman Garner	July 9, 2009
13.0	Weinberg, Roger & Rosenfeld	Theodore Franklin, legal counsel for Calvert	Correspondence Re: Western Aggregates	July 13, 2009
14.0	Taylor & Wiley	John M. Taylor	Re: Western Aggregates Vested Rights Determination	July 21, 2009
15.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Supplemental Information Submitted in Response to the California Geological Survey's Review of Evidence Dated July 2009	July 23, 2009
16.0	Taylor & Wiley	John M. Taylor	Enclosure of "The Gold Dredge" Video	July 29, 2009

August 6, 2009 Public Hearing: The special public hearing for the SMGB to receive comments was held on August 6, 2009. Such discussions were continued during the public hearing held on September 11, 2009.

At its public hearing held on September 11, 2009, the SMGB accepted the findings set forth by the California Geological Survey (CGS), and determined that a preponderance of evidence existed that demonstrated Western has vested rights for all Sections, with exception to Sections 25 and 30, and the southwest corner of Section 34 (Figure 2). The SMGB also noted that it would consider limitations in terms of annual production associated with this determination of vested rights. This matter was to be discussed at the SMGB's January 2010, regular business meeting to be held in the City of Marysville, California. However, on January 14, 2010 this item was deferred until February 11, 2010. In addition, upon such consideration and determination by the SMGB, Western would submit an amended reclamation plan for all of their surface mining operations within 90 days of such determination.



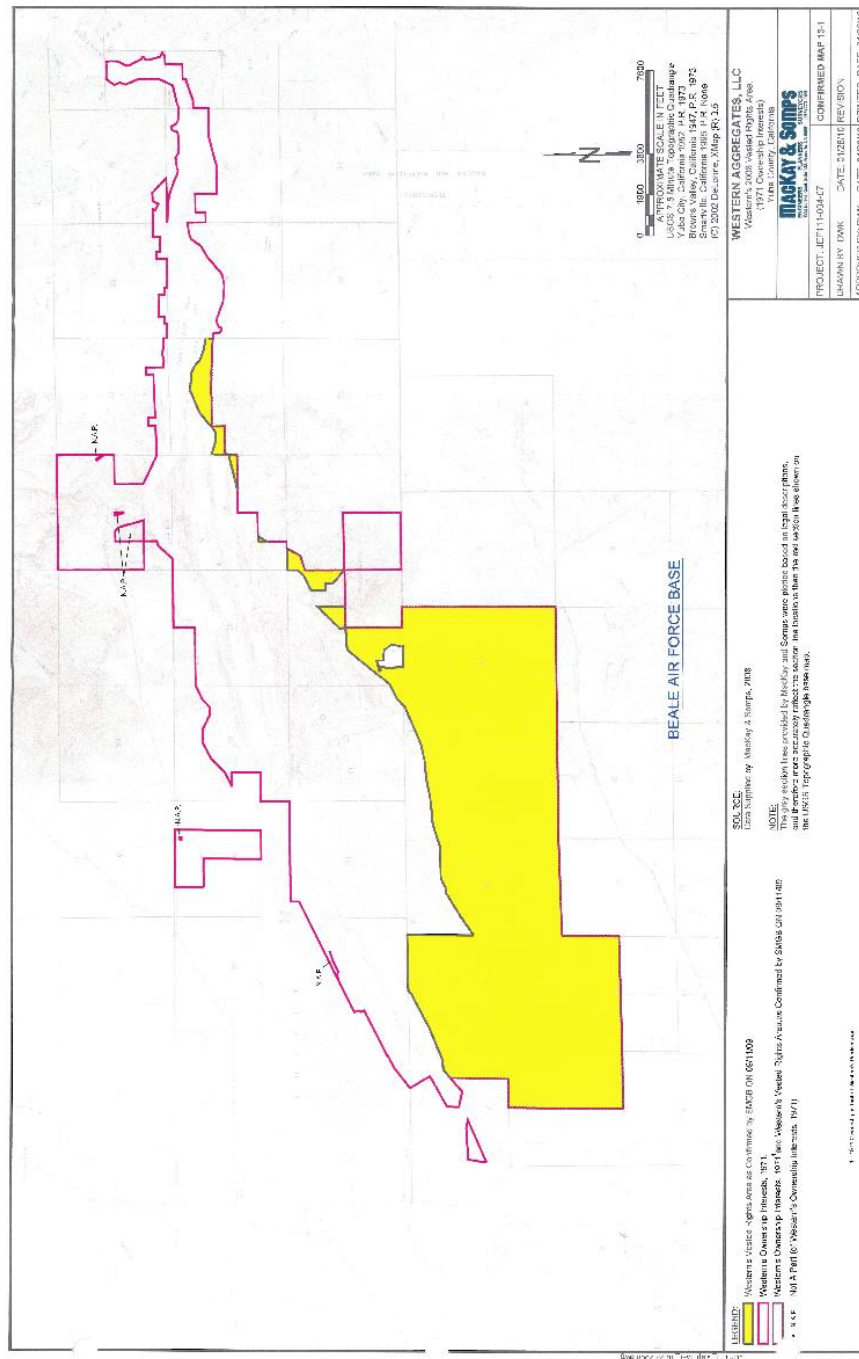


Figure 2. Figure from Western Aggregate’s January 2010 submittal showing the area of vested rights granted by the SMGB at its September 11, 2009, public hearing.

In considering limitations of vested rights pertaining to annual production, the following documents were received:

TABLE 3 Index to Pertinent Documents Received Prior to Conduct of February 11, 2010, Public Hearing to Consider Limitation of Vested Rights Pertinent to Annual Production				
Item No.	Commenter	Author	Description	Date
1.0	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Proposal Regarding Western's Annual Production, January 2010	January 2010
2.0	Taylor & Wiley	John M. Taylor, legal counsel for A. Teichert & Son, Inc.	Western Aggregates Vested Rights Scope Determination	January 27, 2010
3.0	Taylor & Wiley	John M. Taylor, legal counsel for A. Teichert & Son, Inc.	Review of Materials Submitted into the Board	January 28, 2010
4.0	Taylor & Wiley	John M. Taylor, legal counsel for A. Teichert & Son, Inc.	Western Aggregates Vested Rights Determination at SMGB	January 28, 2010
5.0	Taylor & Wiley	John M. Taylor, legal counsel for A. Teichert & Son, Inc.	Apparent Board member Conflicts of Interest and Bias	January 28, 2010
6.0	Taylor & Wiley	John M. Taylor, legal counsel for A. Teichert & Son, Inc.	Cover letter formally requesting inclusion of four letters (referenced above; item Nos. 2 through 5) in the official administrative record.	February 2, 2010
7.0	Kerry Shapiro	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Response to Teichert Aggregates' Claims of Bias and Conflicts of Interest by SMGB Members	February 4, 2010

DISCUSSION: In considering limitations for those portions of Western's surface mining operation, the SMGB, during its September 11, 2009, public hearing, limited such discussion to annual production following recognition of Western's vested rights. The SMGB has heard significant public comment regarding annual production during its August 6, and September 11 hearings. A summary of select discussions, and summary of options available to the SMGB, is provided below.

California Geological Survey (CGS) Analysis of Regional Aggregate Production: At its August 6, 2009, public hearing, the SMGB requested that the CGS provide a report on regional aggregate production and related information for certain counties, notably, Nevada, Placer, Sacramento and Yuba counties. Such report was presented and discussed during the public hearing held on September 11, 2009. In summary, a comparison was made of population growth between 1972 and 2008, new housing permits authorized between 1988 and 2008, aggregate production in Yuba County with overall population growth and new housing permits authorized in the four counties between 1988 and 2008, aggregate production between Yuba and Sacramento counties between 1972 and 2008, overall aggregate production in Yuba County and from lands owned by Western's predecessors between 1957 and 1971, and total average aggregate production in Yuba County and from lands owned by Western and its predecessors as of 1971 and 2008.

CGS's findings were 1) between 1957 and 1971, aggregate production from Western's predecessors' lands represented 43% or more of Yuba County's overall production, and between 1990 and 2008 Western's aggregate production averaged 50% of Yuba County's overall production, 2) between 1988 and 2008, changes in both Yuba County and Western's aggregate production closely reflected the yearly changes in the overall number of building permits issued in the four-county region, and 3) since 1999, Yuba County's aggregate production increased proportionately to Sacramento County's decrease in aggregate production.

Limitations on Annual Production to Western's Vested Rights - Options for Consideration:

Two options are essentially under consideration by the SMGB. The SMGB must determine whether it can and/or should impose a limitation or restriction of annual production to Western's vested rights. In considering this matter, two terms require some clarification: "substantial change" and "impermissible intensification." When considering a "substantial change" or "impermissible intensification", a gradual and natural increase is not prohibited. Furthermore, the Hansen case states *"Neither an increase in the number of patrons or in the volume of goods sold would be considered an enlargement or intensification of the use. And where increased population creates an increased demand for the aggregate used in road*



construction, an increase in production to meet that demand would not be construed as an enlargement or intensification of the use.” (12 Cal.4th 533.)

- Substantial change: The Hansen Case provides some guidance in understanding what is meant by substantial change. Substantial change can be viewed as changes whereas *“an increase in intensity which serves to change the character or purpose of the nonconforming use will be considered to have changed the use.”* (12 Cal.4th at 573.)
- Impermissible Intensification: The Hanson case also provides some guidance as to what is meant by “impermissible intensification” as outlined below:
 - *“[I]n determining whether the nonconforming use was the same before and after the passage of a zoning ordinance, each case must stand on its own facts.”* (12 Cal.4th at 552).
 - *Hansen: “the natural and reasonable expansion of a quarry business to meet increased demand is not an impermissible enlargement or change in the use of the property.”* (Hansen approved of courts in other jurisdictions finding no impermissible intensification in response to “increased demand”, i.e., not based on population growth only, but instead, general increases in demand).
 - The overall business operation must be considered in assessing the scope of a vested right.
 - No impermissible intensification exists, even though truck trips would increase from 1-2 per day up to 120 per day (i.e., a 60- to 120-fold increase) (12 Cal. 4th at 551).
 - *“An increase in business volume alone is not an expansion of a nonconforming use[.]”* (12 Cal.4th at 573)

The two general options before the SMGB are summarized below:

Option No. 1 - Determination as to whether the SMGB should impose any absolute limitations or restrictions on annual production: In making this determination, the SMGB must decide whether a vested right has undergone “substantial change,” or “impermissible intensification.” Five points are made by Western:

- The record clearly shows that there was intent to extract and sell both gold and aggregate.
- No other surface mining operation in the Yuba goldfields that has a vested right has annual production limitations or restrictions attached to those vested rights.
- The SMGB has no authority to regulate or condition a vested right on perceived project impacts or environmental concerns.” (Western’s January 2010 Executive Summary; page 2 of 12)
- The SMGB during its regular business meeting dated September 13, 2007, Executive Officer Report (pages 52-55, 61, and February 14, 2008 (page 25 of 31), while formulating its vested rights regulations, expressly declined to adopt provisions pertaining to a limitation on production, or annual production.
- Western acknowledges that the SMGB has the authority to assess whether Western’s vested right has “impermissibly intensified” or undergone a “substantial change.” (Western’s January 2010 Executive Summary; page 3 of 12).

Option No. 2 - Imposition of limits or restrictions in annual production to Western’s vested rights: Should the SMGB wish to impose limits or restrictions in annual production to Western’s vested rights, three guidelines were offered by Western’s legal counsel, along with a threshold approach, date to be used and action upon threshold amounts being exceeded. These guidelines include:

- Guideline 1 – Baseline Guideline: A threshold at or below 5,509,884 tons per year, adjusted annually for market growth. Should this threshold value be exceeded, Guideline 2 would be implemented.
- Guideline 2 – Market Share Guideline: A threshold at or below 50% of total Yuba County aggregate production for the prior year. Should this threshold value be exceeded, Guideline 3 would be implemented.
- Guideline 3 – Hansen Factors Guideline: A threshold based on whether an increase in production in response to market factors has occurred, and whether an increased production results in a change in use or purpose from the original vested right.

Other considerations: In correspondence dated January 27, 2010 (page 1 footnote) provided by legal counsel for A. Teichert & Son, Inc. (Teichert), it is claimed that “... Western

Aggregates, although possessing a vested right, has a very limited entitlement pursuant to that right and that Western “*should be allowed only the right to engage in gold dredging operations and the limited skimming of rock produced as a byproduct of that gold dredging in the amount of 21,444 tons per year.*” This amount is significantly low and based on tonnage determined by Teichert as the base level of annual rock sales from within the claimed vested area and allowing for a legally based increase in annual production. Teichert also claims (page 5) that the “baseline” production to use is that being mined at the precise moment of vesting, (i.e., April 13, 1971).

In *Hansen*, the Court specifically and clearly held that the scope of a vested right in the context of “impermissible intensification” is not based only on what is happening on the precise date of vesting. In fact, the Court held the opposite, and directed that all aggregate activities that had occurred prior to the 1954 vesting date, including quarrying activities which were dormant for years at the time of vesting, must be considered in assessing whether there might be “impermissible intensification.” The following from *Hansen* exemplifies this:

“[T]he superior court and Court of Appeal concluded that Hansen Brothers’ removal of the quantity of rock estimated in that plan would constitute an impermissible intensification of use of the land. They based that conclusion in part on the assumption that the volume of rock quarried could be considered separately from the overall volume of aggregate produced from the Bear’s Elbow Mine, and in part on reasoning that it was appropriate to compare the proposed volume of future extraction only with past hillside production from the Nevada County portion of the mine, even though a greater quantity of rock had been produced from the Placer County area and overall production included material from the riverbed area of the mine.”

“We concluded above that the vested interest held by Hansen Brothers is use of its Bear’s Elbow Mine property for production and sale of aggregate, and that right included the extraction of all aggregate components. It was error therefore to treat the components separately when considering the intensification of use question, and to exclude production from the Placer County area. It is undisputed that the mine, which straddles the county line, has been operated as a single entity since it was established in 1946.” (12 Cal.4th at 572-573)

Teichert also claims that the “market” for Western’s aggregates historically was limited to Yuba and Sutter Counties (page 2 footnote). Teichert relies on the 1988 Division of Mines and Geology Special Report 132 – Mineral Land Classification: Portland Cement Concrete-Grade Aggregate in the Yuba City-Marysville Production –Consumption Region (page xii and 4). Teichert claims that this report states that in 1988 “*Sacramento satisfies 90% of its aggregate demand with local supplies.*” However, Special Report 132 states that although



“at least 90 percent of its [Sacramento] aggregate needs are still served by local deposits”, the report also states that *“Most of the exported aggregate went to the Sacramento area (about 42% of the total production of the Yuba River production district).”* However, CGS specifically found that Yuba County production was tied to housing starts in the four-County region (Yuba, Nevada, Placer, and Sacramento). Teichert's own production has not been limited to serving just Yuba and Sutter Counties, nor limited to increases based on population growth alone in these counties.

Teichert makes other claims, albeit, not relevant to the consideration before the SMGB in its considerations of annual production.

CONSIDERATION BEFORE THE SMGB: The SMGB must determine whether it can and/or should impose a limitation or restriction of annual production to Western's vested rights. Should a limitation or restriction of annual production to Western's vested rights be imposed, such limitation or restriction needs to be defined.

As previously noted, several considerations exist which suggest that the SMGB should not impose any limitation or restrictions of annual production on Western's vested rights. In addition, the Hansen case states:

*“Nothing in sections 2774 and 2776 requires that all questions of intensified use be addressed in conjunction with approval of a SMARA reclamation plan, however. All that need be established is that the applicant had obtained a vested right to conduct surface mining operations prior to January 1, 1976, *575 and the proposed mining is not a substantial change in the operation. Impermissible intensification of a nonconforming use is more appropriately addressed at such time as increased production actually occurs. The issue is no different, and the county's remedies are the same, as would exist independent of the SMARA application were Hansen Brothers' business to increase. When it appears that a nonconforming use is being expanded, the county may order the operator to restrict the operation to its former level, and seek an injunction if the owner does not obey. (City of Fontana v. Atkinson, supra, 212 Cal.App.2d 499, 508-509; see, e.g., Town of Los Altos Hills v. Adobe Creek Properties, Inc. (1973) 32 Cal.App.3d 488 [108 Cal.Rptr. 271]; see also the modified opinion in F. O. Bither v. Baker Rock Crushing Co., supra, 438 P.2d 988, mod. 249 Or. 652 [440 P.2d 368].) (Hanson Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal.3d 533, 575.)”*

“If the county elects to abandon the effort to address the intensification of use question in advance of actual mining as part of the SMARA reclamation plan approval process, the county is not without remedies if mining activity at the



Bear's Elbow Mine increases in the future to a level that the county believes is excessive. As with any other nonconforming use, the county may seek an injunction or other penalties authorized by the zoning ordinance, whenever it believes that production at the mine has reached a level that constitutes an impermissible intensification of the nonconforming use for which Hansen Brothers has a vested right. (Hanson Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal.34th 533, 575.)”

EXECUTIVE OFFICER’S RECOMMENDATION: The Executive Officer, based on the record and information contained herein, recommends that the SMGB not impose a limitation or restriction of annual production to Western’s vested rights.

SUGGESTED MOTION LANGUAGE: The Executive Officer offers the following motions for the SMGB’s consideration:

Motion No. 1: To impose no annual production limitations or restrictions:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board recognize that Western’s historic annual production is reflective of market forces, and that the board not impose any limitations or restrictions on annual production associated with the granting of vested rights to Western Aggregates, LLC, Yuba Goldfield surface mining operation.

Or,

Motion No. 2: To impose annual production limitations or restrictions:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board impose limitations or restrictions on annual production associated with the granting of vested rights to Western Aggregates, LLC, Yuba Goldfield surface mining operation.

Respectfully submitted:

Stephen M. Testa
Executive Officer



Proceedings for
Request for Determination of Vested Rights

FOR:

Western Aggregates, LLC
Western Aggregates, LLC (Claimant)
Kerry Shapiro (Agent)

The purpose of this Proceeding is to allow the Petitioner and the public to present arguments pertaining to the claimant's request for a vested rights determination for its operations and lands located in the Yuba Goldfields, within the County of Yuba. The Order of the Proceedings is set forth in the SMGB's regulations pursuant to CCR Section 3961.

Following the presentations, the SMGB will consider the issues before it and may ask questions of the participants.

The Order of the Proceedings will be as follows:

The public hearing will proceed in the following manner:

DAY 1, Thursday, February 11, 2010

1. Identification of the Record by the Executive Officer;
2. Statement on Behalf of CGS;
3. Statements on Behalf of Western Aggregates;
4. Statements on Behalf of Yuba County;
5. Statements on Behalf of the Public;

Please submit a "blue speakers card" if you wish to address the Board on this issue.

- Other parties of real interest.

6. Rebuttal on Behalf of Western Aggregates;
7. Statements on Behalf of the Public
8. Deliberation of the SMGB;
9. Motion to close the public hearing.

Notes:

- (a) Notwithstanding the above, the Chairman of the SMGB or the delegated committee's selected chair, or the SMGB's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings, provide for additional testimony, or provide for additional rebuttal.
- (b) The Chairman of the SMGB, or the SMGB's designee, may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted at least five business days prior to the hearing.
- (c) All statements of fact made at the hearing shall be under oath as administered by the Chairman of the SMGB, or the SMGB's designee.
- (d) The public hearing shall be recorded either electronically or by other convenient means.



EXHIBITS

TABLE 3

**Index to Exhibits
 SMGB's February 11, 2010, Public Hearing
 to Consider Limitation of Vested Right Pertinent to Annual Production
 Western Aggregates, LLC.**

Exhibit No.	Commenter	Author	Description	Date
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G	Jeffer Mangels Butler & Marmaro LLP	Kerry Shapiro, legal counsel for Western Aggregates, LLC	Response to Teichert Aggregates' Claims of Bias and Conflicts of Interest by SMGB Members	February 4, 2010